

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, )  
)  
Plaintiff, )  
)  
) No. 13-10048-FDS  
vs. )  
)  
KING BELIN, )  
Defendant. )

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

SENTENCING

John Joseph Moakley United States Courthouse  
Courtroom No. 2  
One Courthouse Way  
Boston, MA 02210

September 29, 2015  
2:00 p.m.

Valerie A. O'Hara  
Official Court Reporter  
John Joseph Moakley United States Courthouse  
One Courthouse Way, Room 3204  
Boston, MA 02210  
E-mail: vaohara@gmail.com

1 APPEARANCES:

2 For The United States:

3 United States Attorney's Office, by JOHN A. WORTMANN, JR.,  
4 ESQ., 1 Courthouse Way, Suite 9200, Boston, Massachusetts  
02110;

5 For the Defendant:

6 PAUL J. GARRITY, ESQ., 14 Londonderry Road,  
7 Londonderry, New Hampshire 03053.

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

PROCEEDINGS

THE CLERK: All rise. Thank you. Please be seated.  
Court is now in session in the matter of United States vs.  
King Belin, Criminal Matter Number 13-10048.

Will counsel please identify themselves for the  
record.

MR. WORTMANN: Good afternoon, your Honor,  
John Wortmann for the United States.

MR. GARRITY: Your Honor, good afternoon, Paul Garrity  
for King Belin.

THE COURT: Good afternoon. This is the sentencing of  
King Belin. I've received and read the pre-sentence report  
through its latest iteration, which is September 18th, the  
defendant's original sentencing memorandum filed on April 23rd  
and motion for a nonguideline sentence filed September 28th as  
well as the government's original sentencing memorandum from  
last March and the supplemental memorandum filed on  
September 23rd.

To my knowledge, no other materials have been  
submitted to the Court. Is there anything else I should have  
seen that I have not, Mr. Garrity?

MR. GARRITY: Not in writing, but Mr. Belin has asked  
me to raise some objections to the PSR report.

THE COURT: All right. It's going to need some  
corrections, I think, in light of the government's position

1       anyway, but Mr. Wortmann.

2               MR. WORTMANN: Your Honor, the only other thing, just  
3       a notification that we'd be seeking a nonguideline sentence.

4               THE COURT: Yes, okay. All right. Mr. Garrity, I  
5       know you've reviewed the PSR. Have you gone over it with  
6       Mr. Belin?

7               MR. GARRITY: I have, your Honor.

8               THE COURT: Is that correct, Mr. Belin?

9               THE DEFENDANT: Yes.

02:04PM 10              THE COURT: All right. My understanding as to the PSR  
11       and what otherwise would have been a significantly higher  
12       guideline range is that the government is taking the position  
13       that all four offenses described in the PSR at paragraphs 34,  
14       35, 36 and 38 for resisting arrest or assault and battery on a  
15       police officer are not scorable as crimes of violence in light  
16       of *Johnson*, and, therefore, the total offense level is -- well,  
17       the base offense level level is 14 with a four-level  
18       enhancement because of the issue with the serial number.

19              So, to that extent, I think the PSR needs to be  
02:05PM 20       changed to reflect that position with the right guideline  
21       range.

22              PROBATION OFFICER: Yes, your Honor.

23              THE COURT: Okay. First off, any issue or correction  
24       with that? Again, I'll walk through the guidelines more  
25       formally, but basically we're down to a guideline range of 57

1 to 71 months?

2 MR. GARRITY: Judge, as I indicated in the  
3 supplemental sentencing memorandum I filed yesterday, Mr. Belin  
4 has asked me to take the position that the four-level  
5 enhancement for the obliterated serial number does not apply  
6 because it was not alleged in the indictment and not proven to  
7 the jury beyond a reasonable doubt.

8 THE COURT: Okay. Let me, putting that to one side  
9 for just a moment, does he have any other corrections or  
02:05PM 10 objections to the PSR?

11 MR. GARRITY: He does, Judge. In paragraph 9, he's  
12 asked me to object to the language in paragraph 9. It's on the  
13 fourth line of that paragraph. That indicates he quickly  
14 walked down Mildred Avenue. He objects to that.

15 THE COURT: It's not going to affect his sentence,  
16 that difference, and, obviously, this is the government's  
17 version of the offense as edited by probation, so I note the  
18 objection, but I'm going to leave the report as it is in that  
19 regard.

02:06PM 20 MR. GARRITY: Judge, he's got another.

21 THE COURT: Yes.

22 MR. GARRITY: In paragraph 11.

23 THE COURT: Yes.

24 MR. GARRITY: He objects to the entire paragraph.  
25 He's asked me to object to the entire paragraph.

1 THE COURT: All right. Again, that may relate to the  
2 issue of the legality of the search, but that's not going to  
3 affect the sentencing calculus in any way, so, again, I will  
4 note the objection, but I'll leave the report as is.

5 MR. GARRITY: Thank you. Judge, in paragraph 12,  
6 again, he's asked me to object. That's in the second sentence.  
7 It begins with, "In response, Belin immediately reached to his  
8 waist with both hands." He's asked me to object to that.

9 THE COURT: Same ruling in that regard.

02:07PM 10 MR. GARRITY: Again, he objects to the four-level  
11 enhancement.

12 THE COURT: All right. Let's talk about the  
13 four-level enhancement. Let me find my copy of the guidelines  
14 here. What's the guideline provision?

15 MR. WORTMANN: I believe it's 2K2.1, your Honor, and I  
16 believe it's --

17 MR. GARRITY: It's 2K2.1(b)(4).

18 THE COURT: Yes, okay. All right. Mr. Garrity.

19 MR. GARRITY: Judge, just before I begin my argument,  
02:08PM 20 Mr. Belin has asked me to present another argument that I would  
21 just say to the Court I can't in good faith present because I  
22 don't think it's an accurate reading of the guidelines, but,  
23 nevertheless, he's asked me to present it.

24 But with respect to the objection I laid out in my  
25 supplemental sentencing memorandum, he would object to the

1 enhancement being applied because it was not alleged in the  
2 indictment and not proven to the jury beyond a reasonable  
3 doubt, and I would submit as a matter of constitutional law  
4 with respect to the Sixth Amendment that he's entitled to have  
5 that alleged and proved.

6 I guess I acknowledge that *Alleyne* didn't go quite  
7 that far, but I think there's some hints in some of the case  
8 law subsequent to *Apprendi* that eventually the Court might go  
9 that way, but, as a constitutional matter, he's asked me to  
02:09PM 10 present that argument.

11 In addition, it is the government's burden with  
12 respect to that enhancement. I'm not sure that they've  
13 presented sufficient evidence at this hearing with respect to  
14 whether or not the serial number was obliterated, or I just  
15 want to make sure I've got the correct language, Judge, altered  
16 or obliterated.

17 THE COURT: All right. As to the Constitutional Sixth  
18 Amendment argument, I overrule the objection. You're correct,  
19 the case law does not go so far. Again, we're talking about a  
02:09PM 20 guideline enhancement here, but I will overrule the objection.

21 Mr. Wortmann, do you want to respond as to whether the  
22 facts support the application of the enhancement?

23 MR. WORTMANN: Your Honor, you know, the objection  
24 here is a little bit late because had it been made in a timely  
25 fashion, I wouldn't have the gun here. Once again, the gun was

1 before the Court. I produced photographs that showed that the  
2 serial number had been obliterated.

3 THE COURT: And the PSR says that as well.

4 MR. WORTMANN: And the PSR says that as well.

5 THE COURT: All right. That objection is overruled as  
6 well.

7 MR. GARRITY: Judge, he's got one further objection to  
8 the enhancement that he's asked me to point out to the Court.  
9 Mr. Belin believes that due to the application note, which is  
02:10PM 10 application note 8, he believes that that enhancement only  
11 applies to people convicted of offenses that can be found under  
12 2K2.1(b)(7) --(a)(7), Judge.

13 THE COURT: (A)(7), all right.

14 MR. WORTMANN: Your Honor, if you read the plain  
15 language of 2K2.1(b)(4) says, "If any firearm had an  
16 obliterated serial -- had an altered or obliterated serial  
17 number increased by four levels, the plain language of that  
18 guideline provision controls," and the law is pretty clear that  
19 the four-level enhancement applies any time that the gun that's  
02:12PM 20 charged in the offense of conviction has an obliterated or  
21 altered serial number.

22 THE COURT: All right. I'm going to overrule that  
23 objection as well.

24 MR. WORTMANN: Your Honor, if I could.

25 THE COURT: Yes.



1 MR. WORTMANN: Forgive me, if I could just comment on  
2 one of the objections, and that is the objection with respect  
3 to paragraph 12 of the PSR.

4 THE COURT: Yes.

5 MR. WORTMANN: While that is not technically an issue  
6 for a guideline, it is one of the things, the resistance and  
7 the movement that Mr. Belin made towards his waist is one of  
8 the issues that I believe is relevant at determining whether or  
9 not a nonguideline sentence is warranted, and I would simply  
02:12PM 10 ask the Court to rely on its own memory of the trial testimony  
11 of Officer Bissonnette and the other arresting officers about  
12 the nature of Mr. Belin's resistance when he was first  
13 approached near the electrical box in the park, and I think  
14 Officer Bissonnette's testimony, in particular, my memory it  
15 was pretty clear that, you know, he started moving, Mr. Belin  
16 started moving his hands towards his waist, and they were  
17 afraid that he was going to the gun, and, of course, the  
18 offense conduct is also clear that the gun was both fully  
19 loaded and had a round in the chamber.

02:13PM 20 THE COURT: All right. It seems to me there are two  
21 different issues there. The reasonableness of the officer's  
22 reaction is one thing and goes to the reasonableness of the  
23 search or the frisk.

24 What Mr. Belin was intending is something different.  
25 I don't think that I have a sufficient factual basis to

1 conclude that Mr. Belin was reaching for a weapon in order to  
2 use or threaten police officers at the time of the stop.

3 MR. WORTMANN: The issue is -- with respect, your  
4 Honor, the issue is not one of intent but rather of reckless  
5 endangerment, and while when I --

6 THE COURT: Well, he had the gun on him, it was  
7 loaded, fine, and I've already ruled I thought the police  
8 officers acted reasonably within the meaning of the Fourth  
9 Amendment. I'm not sure I can take it any farther than that in  
02:14PM 10 terms of, you know, whether he was prepared to use it against  
11 the officers or threaten it against the officers.

12 MR. WORTMANN: And it's really, you know, I think here  
13 it's the fact that the gun had a round in the chamber, the fact  
14 that he resisted that created the risk of harm to both the  
15 officers, himself and other people in the area.

16 THE COURT: That I think is fair argument. Let's go  
17 back. All right. In terms of the PSR, I've indicated that it  
18 needs to be corrected to reflect the government's position on  
19 *Johnson*. I've overruled the defendant's other objections.

02:14PM 20 Are there any other objections that I need to rule on  
21 before we go any further with regard to the PSR, Mr. Garrity?

22 MR. GARRITY: No, your Honor.

23 THE COURT: Mr. Wortmann?

24 MR. WORTMANN: Thank you, no.

25 THE COURT: All right. So with that, the base offense

1 level rather than being 24 is 14. I will apply the four-level  
2 enhancement. That brings us to a level 18. His criminal  
3 history score is 15, his criminal history category is VI. That  
4 produces a guideline range of 57 to 71 months, a supervised  
5 release range of one to three years, a fine range of \$6,000 to  
6 \$60,000 and a \$100 special assessment.

7 Is there any correction to that calculation?

8 MR. WORTMANN: No, your Honor.

9 MR. GARRITY: No, your Honor.

02:15PM 10 THE COURT: Okay. All right. With that then as our  
11 starting point, and, Mr. Garrity, remind me, how long has the  
12 defendant been in custody?

13 MR. GARRITY: Judge, there was a period of time where  
14 he was held on a state charge related to this, and then there  
15 was a probation violation that he was held on. I would argue  
16 that was related to this because the violation was based on  
17 this offense, so he's been held since September of 2012.

18 THE COURT: September, 2012 is on state custody?

19 MR. GARRITY: He came into federal custody, I believe.

02:16PM 20 THE COURT: October 9th, 2013 is what I have.

21 MR. GARRITY: That's correct, your Honor, but I  
22 believe Bureau of Prison will give him credit for the time held  
23 on the related charge, and I submit he should be given credit  
24 for the probation violation as well because it's all  
25 intermingled with the offense conduct.

1 MR. WORTMANN: Your Honor, in fact, had Mr. Belin been  
2 revoked and a probationary revocation sentence imposed, then he  
3 would not be entitled, but because, as indicated in the PSR,  
4 because even though he was on probation for this earlier gun  
5 offense, that probation violation was ultimately dismissed, and  
6 he was sent over here, therefore, I believe that the Bureau of  
7 Prisons will give him credit going all the way back to  
8 September.

9 THE COURT: September, 2012?

02:17PM 10 MR. WORTMANN: September 17th, 2012.

11 THE COURT: Okay. All right. With that as our  
12 starting point, Mr. Wortmann, let me hear the government's  
13 recommendation.

14 MR. WORTMANN: Thank you, your Honor. Your Honor, you  
15 have a lot of paper in front of you, I apologize to the point  
16 that the sentencing memorandum was repetitive, but I frankly  
17 wasn't sure how much to do, so I included it.

18 I'm asking you for an 84-month sentence, which is  
19 approximately 13 months over the high end of the guideline  
02:17PM 20 range that you've calculated, and it's based on some very basic  
21 and very simple things.

22 One is the seriousness of firearm offenses in this  
23 district and both in *Politano* and *Diaz-Rio*, the First Circuit  
24 has recognized that gun offenses can be held, can be recognized  
25 by the District Court to be particularly serious, and on that

1 basis alone, a departure from the guidelines is appropriate.

2 I've given your Honor some of the things, some  
3 excerpts of the things that you read in the newspapers every  
4 day, some particular incidents of late in these neighborhoods  
5 because, as the research makes clear, it's small sections of  
6 Roxbury, Dorchester and Mattapan that are subjected to these  
7 gun offenses.

8 Back several years ago, the Kennedy School did a study  
9 of where the gun offenses, the shootings happened in the City  
02:18PM 10 of Boston over a 20-year period. They found that 5 percent of  
11 the shootings happened in 78 percent of the city, and nearly 80  
12 percent of the city had never had a single shooting, and  
13 Norfolk Park, as you heard originally at the detention hearing,  
14 and the area around where the incident happened are several  
15 blocks away from where Mr. Belin's 2009 car stop, when he had  
16 another gun and another weapon in his car along with his son,  
17 is in the center of one of those areas.

18 That by itself justifies the increase over the  
19 guideline range, but here, you know, I ask the Court to look  
02:19PM 20 carefully at the specific circumstances leading up to the  
21 arrest and the seizure of the firearm from Mr. Belin.

22 The fact that he had additional ammunition, your  
23 Honor, in that Newport cigarette package, and, you know, at  
24 least one District Court Judge, as I had indicated in both the  
25 memos, had found something. You know, if you have extra

1 ammunition, it's further indication that the gun is going to be  
2 used.

3 The fact that he had been shot in May of 2012, along  
4 with one of his friends, you know, and the traditional  
5 retaliatory nature of the shooting in Boston just says that  
6 this is a more serious case than the run-of-the-mill gun felon  
7 in possession case.

8 The fact that he had marijuana on him, no evidence  
9 that there was distribution, otherwise he would have been  
02:20PM 10 subject to a four-level, therefore, the only thing that we  
11 could conclude is that it was for personal use, the only  
12 logical, reasonable, and whether he had already smoked or he  
13 was planning to smoke, that combination of marijuana and a  
14 loaded firearm just makes the case more serious because it  
15 makes it more likely that who has ever got the gun is going to  
16 make bad judgments.

17 And the record is replete, your Honor, with Mr. Belin  
18 making bad judgments. The location, you know, it's not just  
19 that it was the center of gang activity, but it's the fact that  
02:20PM 20 this is a park where children and their parents play every day,  
21 and if you recall the photographs that were introduced at trial  
22 and testimony at trial, that electrical box where the stop was  
23 actually made was literally, you could reach over to the tot  
24 lot, and people were playing there.

25 That, again, makes it more serious, as does the fact

1 that the manner in which he resisted the officer's attempts to  
2 secure and subdue him. You know, I don't think three cops had  
3 to come in in order to get him under control. You know, that's  
4 a fact that you heard in the trial, the fact that that gun was  
5 in the waistband, the fact that that gun had a round in the  
6 chamber, you know, it increased it, you know, whether or not  
7 within the meaning of *United States vs. Bell*, it would qualify  
8 as reckless endangerment.

9 I didn't seek that enhancement because originally he  
02:21PM 10 was an ACC, and it didn't apply, but the loss surrounding  
11 3(c)1.2 and *Bell* can be found, your Honor, at 953 F.2d 6 talks  
12 about the mere hesitation when ordered to the ground when you  
13 have a gun is not sufficient to constitute reckless  
14 endangerment, but it says that actually making a move towards  
15 the gun might be, and I'm not asking you to do a specific  
16 upward adjustment because we didn't do it in response to the  
17 original PSR, but I do think, your Honor, that the way in which  
18 Mr. Belin reacted, the fact that that gun was loaded with a  
19 round in the chamber makes this a more serious case, and,  
02:22PM 20 finally, the thing that makes it a more serious case is the  
21 fact that he previously had been arrested for another firearm  
22 by the same officer a couple blocks away, and as the offense  
23 conduct and as the reports attached to the supplemental  
24 memorandum make clear, there is an additional weapon in that  
25 car, there was a holster in that car, and his infant son was in

1 the car in the back seat, all of which makes it more serious,  
2 as does Mr. Belin's criminal history.

3 Counsel says, oh, his criminal history is overstated,  
4 and I suggest, your Honor, it's quite the opposite. If you  
5 look at the PSR, he's been under continuous judicial criminal  
6 justice supervision for almost 11 years.

7 During that time, he's got 20 convictions, that he's  
8 been convicted of 20 charges, he's been sentenced seven times.  
9 He's been violated probation six times, and at the time of the  
02:23PM 10 offense here, as I've indicated, he was on probation for  
11 another gun offense, and he was also on pretrial release on  
12 another automobile offense.

13 All of those things make this a more serious case than  
14 the typical gun case, which is a serious case in this district  
15 and one that for purposes of all of the provisions of 3553, but  
16 particularly special and general deterrence, you know, is  
17 really critical, and that is, you know, letting Mr. Belin know,  
18 letting the four gentlemen that he was with that day know, all  
19 the people that, you know, from that area in the city know that  
02:23PM 20 if you get caught with a gun, everybody is going to consider it  
21 to be a serious case.

22 Now, there's a couple of mitigation factors that are  
23 argued. There's did Mr. Belin -- he's got mental health  
24 issues. We know that. I've never seen the report, but I  
25 recognize that from the provisions of the pre-sentence report.



1 He did not have a terrific upbringing. He had some problems in  
2 school, and here's the issue, Judge. Every one of those things  
3 I recognize. Every one of those things with any defendant has  
4 a tendency to make them less culpable for their crimes, but at  
5 the same time, if you look at the same literature, it also  
6 makes them more dangerous, and as the Supreme Court recognized  
7 in *Pinholster* with respect to mental health issues that it's  
8 impossible to figure out how to balance those.

9 At least in the absence of a very specific and very  
02:24PM 10 detailed report that says that this particular kind of mental  
11 health, you know, can be dealt with and is not going to cause  
12 him to be more dangerous and more likely to recidivate when he  
13 gets out. All those things, your Honor, when I put them  
14 together in the government's view fully justifies a sentence of  
15 84 months.

16 In addition, your Honor, I don't believe there's any  
17 basis for a fine. I'm asking for a \$100 mandatory special  
18 assessment, a final order of forfeiture both with respect to  
19 the charged firearm and the charged ammunition and three  
02:25PM 20 judicial recommendations because, you know, if Mr. Belin's  
21 future is going to be better than his life up until today, we  
22 have to start worrying about what the system can do to help him  
23 because the sentences are only going to get longer, and the  
24 danger to him, he's been shot once already, is only going to  
25 increase.

1           A recommendation for any mental health treatment  
2     that's available for any alcohol abuse, any treatment regarding  
3     alcohol, because as I read the PSR, even though he was a  
4     regular smoker of marijuana, it really appears that alcohol was  
5     the biggest problem and any vocational training.

6           On supervised release, your Honor, I'd ask for, 1,  
7     that while he's on supervised release he be prohibited from  
8     drinking alcohol whatsoever, that your Honor require that he  
9     not associate with the individuals that were included on the  
02:26PM 10    associational restriction, which is, quite frankly, when I  
11    drafted it, it was on the assumption that this was going to be  
12    at least a 15-year sentence, and, therefore, I narrowed it,  
13    and, obviously, I'll stick to that.

14           Three of the four individuals that was with him, the  
15    fourth had no gang experience. People who he's been FIO'd  
16    with, people who's been involved with incident reports and  
17    other individuals from this area of the city that have federal  
18    convictions, that for the first year of when he's out, when he  
19    finishes with the BOP custody, when he's not in a halfway house  
02:27PM 20    that he be given a 9 p.m. to 7 a.m. curfew to be enforced by  
21    electronic monitoring because the first 12 months is always the  
22    most significant and also the most likely.

23           All the literature tells us when someone is going to  
24    get into trouble, if we can keep him, you know, inside in the  
25    evening and early morning hours when a great percentage of the

1 crimes occur in the City of Boston, it only helps him and helps  
2 the community, that he be provided with substance abuse  
3 treatment as probation considers it to be necessary or  
4 appropriate, mental health counseling, the same thing, drug  
5 testing up to 104 tests per year, a recommendation to restart  
6 and a requirement, the MRT.

7 On the supplemental memorandum, your Honor, I added a  
8 relatively narrow geographic restriction for the area around  
9 Norfolk Park. That's the area where both his gun offenses took  
02:28PM 10 place. It's an area where a lot of the guys he hangs out with  
11 live. It will not interfere with him, assuming that otherwise  
12 he be entitled to live in his mother's residence, and that  
13 remains the same. It will not restrict that, but it will help  
14 him to stay away from situations and people and places where he  
15 is more likely to encounter risks and the opportunities to make  
16 bad decisions.

17 THE COURT: Let me interject there. On the proposed  
18 geographic restriction, I think there may be a street name  
19 missing from your map.

02:28PM 20 MR. WORTMANN: My apologies.

21 THE COURT: It's not clear, it goes Talbert Avenue,  
22 I'm going clockwise, Dorchester Avenue.

23 MR. WORTMANN: Right. Then it says Dot Avenue.

24 THE COURT: Dot Avenue, it's same thing, then you say  
25 Morton Street, which I think if you look at the bottom of the

1 map, Morton Street actually angles down. It looks like there's  
2 a street between Morton and Dorchester.

3 MR. WORTMANN: I think there is, and I'll be happy to  
4 correct that, your Honor, my apologies.

5 THE COURT: All right. Then on up to Blue Hill Ave.  
6 and back over. I don't know what the name of that street is,  
7 but I don't think it's Morton Street.

8 MR. WORTMANN: No, I think you're exactly right, and I  
9 do apologize for that, but if your Honor is inclined to allow  
02:29PM 10 that, I will provide you and counsel with a corrected one this  
11 afternoon.

12 THE COURT: All right.

13 MR. WORTMANN: Unless your Honor has any questions...

14 THE COURT: Let me hear from Mr. Garrity.

15 MR. GARRITY: Your Honor, as Mr. Wortmann talked  
16 about, I think he minimizes to some extent, Mr. Belin's  
17 upbringing was chaotic. I think the PSR lays it out in some  
18 detail, but I think the reality is, like a number of children,  
19 he didn't have a father figure. I think his father or a person  
02:30PM 20 he considered to be his father was incarcerated, and he really  
21 didn't have a whole lot of contact with that individual.

22 According to his mother, he was doing well up until I  
23 think seventh grade, was a good student. That's when things  
24 went off the rail, and I think it's pretty evident from the PSR  
25 and from everything else I've seen that's when the mental

1 health issues really kicked in. He got a little counseling,  
2 according to the PSR, around the age of 11. I think he had  
3 counseling for about a year, year and a half, but from what I  
4 have seen, it doesn't appear he got any intensive, long-term  
5 treatment that I think is clear he really needs, and I think  
6 those mental health issues led him to self-medicate by way of  
7 marijuana, by way of alcohol and led him into a number of the  
8 issues that I would submit overinflated his criminal history  
9 category.

02:31PM 10 He was a young individual, still is relatively young,  
11 but when he admitted a lot of these crimes that drove up his  
12 criminal history score, he was either a teenager in his early  
13 20's, an individual with mental health issues without a strong  
14 father figure with a pretty chaotic background thrown into the  
15 midst of what I think the government realistically describes as  
16 kind of somewhat a war zone, but despite that and despite all  
17 of the police reports the government submitted to you, there's  
18 no indication whatsoever that Mr. Belin ever used a gun,  
19 brandished it, shot a gun.

02:31PM 20 I know Mr. Wortmann talks a lot of about gun violence  
21 in Boston, and I don't dispute that whatsoever. I think it's  
22 the reality of the situation in Boston, but there's no  
23 indication he ever utilized a gun in a violent manner, and I  
24 think it could be a fair reading of what's in the PSR in terms  
25 of Mr. Belin being a shooting victim, he had the weapon that

1 day simply as a means of self-defense rather than as an  
2 offensive weapon.

3 Judge, I think the 84 months that the government is  
4 asking for is over the top. Certainly a message has to be sent  
5 to Mr. Belin because of his prior conviction that he can't  
6 engage in this sort of conduct again. A message has to be sent  
7 to the general public that gun crimes can't be countenance, but  
8 I think 37 months is not a light sentence. That's the sentence  
9 we're requesting. I think 84 months is just way over the top  
02:33PM 10 given the facts of this case.

11 Mr. Wortmann talked about --

12 THE COURT: 37 months is effectively time served,  
13 isn't it?

14 MR. GARRITY: It is, your Honor. And he's been  
15 warehoused, hasn't received much, if any, counseling while at  
16 Plymouth, so the time he spent in jail really hasn't addressed  
17 any of the underlying issues, but he'll be under close  
18 supervision.

19 The probation office, if you impose the curfew that  
02:33PM 20 Mr. Wortmann has asked for along with the no drinking  
21 condition, which we really don't oppose, I think that will also  
22 serve to protect the public, so I guess the question is how  
23 much is enough in terms of punishment?

24 There's no indication at all he used that weapon, no  
25 indication that he was going to Norfolk Park. He was walking

1 with these other individuals on the sidewalk towards the park  
2 and no indication that was his destination.

3 I don't dispute that perhaps the way in which he  
4 interacted with the officer that he could have handled that  
5 better, but I don't think any of this warrants an 84-month  
6 sentence. He shouldn't be punished for the violent gun crimes  
7 of others, and if I read the government's memorandum correctly  
8 and hear what they're saying correctly, they're in effect  
9 saying individuals like Mr. Belin who possess guns, that that  
02:34PM 10 geographical area per se should get some sort of enhancement.

11 I don't think that's appropriate, I don't think the  
12 guidelines call for that, I don't think the facts of this case  
13 call for it. I think that given his background, the fact that  
14 many of his crimes of conviction took place when he was a young  
15 individual suffering what I say is some pretty severe mental  
16 health issues, I think the 37 months is more than enough along  
17 with the recommendations I've asked for when he's on  
18 supervision, mental health treatment, substance abuse  
19 treatment, vocational treatment, I think all of those will  
02:35PM 20 address the issues that led Mr. Belin to being before the Court  
21 and have led Mr. Belin to being before other courts.

22 THE COURT: Okay. Mr. Wortmann, any reply?

23 MR. WORTMANN: Well, your Honor, what it's all about  
24 is possessing the gun. Every shooting starts with one thing,  
25 and that's with somebody with a gun in their waistband or in

1     their pocket, and it gives them the opportunity to make bad  
2     decisions, and every year 250, 350 people end up being the  
3     victims of bad decisions, and, you know, it would be great if  
4     we could say well, oh, Johnny Jones, he's going to carry a gun  
5     illegally, but he's not going to use it.

6             You can't make that decision, and in order to change  
7     the quality of life in these neighborhoods, we got to get rid  
8     of the guns, and that's why general deterrence here is so  
9     important and particularly with somebody like Mr. Belin, who  
02:36PM 10     did it once, got caught red-handed, got a pretty good sentence  
11     from the state court system, and then, you know, literally  
12     months after he gets out, he's doing it all over again and  
13     doing it in a way that's far more dangerous.

14             I think 84 months is an extremely appropriate sentence  
15     not just because it's a gun case but because it's a gun case  
16     that was committed in the way that it was by the person who the  
17     defendant has shown himself to be.

18             THE COURT: Yes, Mr. Garrity.

19             MR. GARRITY: With respect to the general deterrence  
02:36PM 20     argument, in reality, I guess, you know, general deterrence  
21     only affects those who are going to hear about his sentence and  
22     know what his sentence was. His circle of people that he  
23     interacts with are going to hear if you give him the sentence  
24     I'm asking for that he got double what he got before, and I  
25     think a three-year sentence is not a short period of time.



1           That would send the message of general deterrence, and  
2           the government submitted to you a number of police reports as  
3           exhibits. There's not one piece of paper in there that  
4           indicates that Mr. Belin ever engaged in gun violence, and he  
5           was a shooting victim. I think there's every reason to believe  
6           he had that for self-defense, just as you could reasonably read  
7           the evidence that he had it for other purposes, but I think  
8           given the fact that none of those reports, none of the prior  
9           convictions ever referred to him using a gun, I think there's a  
02:37PM 10          good reason to believe he had that gun for self-defense.

11           THE COURT: All right. Mr. Belin, do you wish to  
12          address the Court before I impose sentence?

13           THE DEFENDANT: Yes, I do. I just want you to know  
14          that I do take responsibility. I take full responsibility for  
15          having the gun on me was wrong, I shouldn't have had it, and it  
16          was just that I feel I went to trial because I feel as though  
17          that I was being treated unfairly as far as what happened on  
18          the scene, as far as everything that I went through, going to  
19          Devens, everything, as far as everything I went through, and I  
02:38PM 20          never got a chance to, you know, plead out to any of my actual  
21          guidelines, so that's the reason why I really went to trial  
22          because I just wasn't trying to plead out to 15 years.

23           I felt as though going to trial -- and I was offered a  
24          conditional plea. I wanted all my rights to be reserved, not  
25          just what was within the conditional plea, and I just want you

1 to know I take full responsibility for having the gun on me. I  
2 always did.

3 THE COURT: Okay. Thank you. All right. There are a  
4 lot of issues I guess I want to address, and I'll try to go  
5 through them one at a time. I guess first I agree  
6 wholeheartedly with Mr. Wortmann's view of guns and the effect  
7 that they've had not just in this city but nationwide.

8 I certainly believe that people in the city and in the  
9 African-American community or the Hispanic community are not  
02:39PM 10 entitled to less law enforcement or less vigorous law  
11 enforcement than other parts of the state. Guns tend to make  
12 the lives of those communities, the people in those communities  
13 more miserable.

14 They don't tend to affect people living in the  
15 suburbs, as many of us do, and I think it's a real issue. It  
16 needs to be taken seriously, and people who carry firearms  
17 illegally or misuse them or use them at all ought to be  
18 punished for the behavior.

19 Having said that, I can't hold Mr. Belin liable for  
02:40PM 20 what other persons have done. I have to judge him as an  
21 individual. Of course, everything happens in a context, but I  
22 can only hold him liable for what he was done, and I should  
23 add, as an afterthought, I am not punishing him for going to  
24 trial in any way, shape or form.

25 In terms of the characteristic of the offense that he

1 had extra rounds of ammunition, which made it more likely that  
2 he intended to use them, I agree that does make this a more  
3 serious case than most, similar types of cases. The marijuana  
4 is a bad fact as well in terms of assessing his behavior and  
5 assessing the appropriate punishment, as is, of course, the  
6 obliterated serial number, although that's taken into account  
7 in the guideline calculation.

8 The location of the offense at a park on the edge of a  
9 playground, I take the point. I think there is only so much  
02:41PM 10 weight you can put on that. It's a fact of the matter in the  
11 city that almost anywhere you are is near something, a  
12 playground, a school, a church, a home where children live.  
13 It's part of the problem, every time guns are discharged, it  
14 seems an innocent person is hit, so it's a point, but I don't  
15 put too much weight on it.

16 I agree that it's a negative fact that he was on or  
17 under supervision for another criminal offense, although,  
18 again, that's reflected in the guideline calculation. In terms  
19 of the defendant's upbringing, I agree with the general  
02:42PM 20 proposition, and it cuts across all strata of society, on the  
21 one hand, the defendant is not responsible for who his parents  
22 are and how he was raised, and his father was incarcerated.  
23 That's not his choice or his fault, and, therefore, ought to  
24 make him less culpable to some extent.

25 It's also true that someone raised in that environment

1 is more likely to commit more crimes, to repeat the patterns  
2 that have already been set. The inverse is true for so-called  
3 white collar criminals. You might argue that they're more  
4 culpable because they've had many advantages, some of them, and  
5 they're less likely to recidivate.

6 It's hard to know what to do with all of this. I take  
7 into account, of course, as I must, the fact that the defendant  
8 had a difficult childhood and that he's not responsible, again,  
9 for the choices of his parents.

02:43PM 10 That is a factor that needs to be weighed in the scale  
11 here, but he's also an adult who needs to be responsible for  
12 his own choices. I do want to add that I have never understood  
13 the argument, which has gained quite a bit of currency lately,  
14 that it doesn't matter if children, particularly boys, have  
15 fathers or not, that there's lots of different alternative  
16 families and that we, as a society, are being unfairly  
17 judgmental of single mothers or otherwise difficult  
18 child-raising circumstances.

19 I think as a general proposition children are better  
02:44PM 20 off with parents, with parents who are home, who are employed  
21 and are making their best efforts to raise them. That is to me  
22 perfectly obvious and that we ought not to back away from that  
23 fact, but, again, Mr. Belin didn't have that choice. He  
24 unfortunately is making bad choices for his own children, but  
25 I'm not going to give him a shorter or longer sentence based on

1       that either.

2               And I apologize, I'm sort of hopping around here to a  
3       number of different topics somewhat quickly. It's true that  
4       the defendant has spent three years in custody. I'm sure that  
5       whether in state custody or federal custody that he has not had  
6       an opportunity to participate in the programs that he would  
7       have had had he been sentenced earlier to prison. I'm not sure  
8       what to say about that. He did go to trial, of course, which  
9       was his right.

02:45PM 10              It does take longer to get a case ready for trial, and  
11       he did have the mental health evaluation, which I was requested  
12       to order and I did order, and, frankly, the last six months or  
13       so have been delays occasioned by the *Johnson* case and related  
14       issues, which have worked very much to the defendant's favor.

15              I think otherwise he would be looking at a quite  
16       significant sentence, and so on the whole, I think the  
17       defendant has benefited from the delay in sentencing, although  
18       I recognize it is harder to do the time in detention rather  
19       than in a federal facility as a general proposition,  
02:46PM 20       particularly due to the lack of programs.

21              It does appear to me based on the forensic report that  
22       the defendant does have mental health issues. He does, I  
23       think, require treatment for that. I'm obviously no expert.  
24       I'm sure it contributes to some extent to his criminal  
25       behavior, but, again, it does not make him any less dangerous,

1 and the defendant's criminal history, you know, whether or not  
2 *Johnson* applies and whether or not he was on probation for  
3 another offense is significant.

4 He has been under some form of criminal justice  
5 supervision or incarceration for large chunks of his life. He  
6 has been repeatedly in the criminal justice system and has  
7 amassed a criminal record that is significant given his  
8 relatively short life so far.

9 He has been able to dodge much more significant  
02:47PM 10 consequences because of the Supreme Court's ruling, but the  
11 offenses are there, nonetheless. He does have four resisting  
12 arrest convictions as well as assault and battery on a police  
13 officer.

14 So, with all of that, I think as I see it, it is an  
15 unusual situation to go above the high end of the guidelines.  
16 I have done it from time to time. It is and ought to be rare,  
17 whether as the matter of the guidelines or under 3553, for  
18 cases that have unusual or significant characteristics or  
19 attributes or factors that take them out of the heartland.

02:48PM 20 Even with all the factors pointed out by Mr. Wortmann  
21 here, it's not clear to me that I need to go above the high end  
22 of the guidelines. I think there is a good argument for it,  
23 and Mr. Wortmann has made it, but I think I'm not quite  
24 convinced, and what I'm going to do is to sentence at the high  
25 end of the guidelines at 71 months but not go beyond it, and I

1 do that with some reservations given my obvious concerns about  
2 the possibility of the defendant's propensity for violence.

3 I do think that the curfew, the associational  
4 restrictions and the geographic restrictions are appropriate.  
5 I know Mr. Wortmann's position because he advocates for this  
6 routinely, and I agree with the basic proposition that one of  
7 the problems that defendants have is they come out of the  
8 system, they come out of prison, and they go back right to the  
9 same neighborhood and begin hanging out with the same people  
02:49PM 10 doing exactly what they did before they went in, and it's a  
11 very easy thing to do to fall back into old patterns and to not  
12 really have a chance to get on your feet and to try turning  
13 your life in a different direction, whether it's in terms of  
14 not only just abiding by the law but also maintaining  
15 employment, getting yourself educated, taking care of your  
16 children and so on, so I do think those restrictions are  
17 appropriate.

18 Again, they're not intended to punish but to give the  
19 defendant a fair chance under the circumstances to again point  
02:50PM 20 his life in a different direction from where it's been pointed  
21 thus far.

22 So for all of those reasons, and I'll state the formal  
23 reasons in a moment, I am going to sentence him to 71 months in  
24 prison. I'm sorry, Mr. Wortmann, did the government -- what  
25 was your recommendation of the length of supervised release?

1 MR. WORTMANN: Three years, your Honor.

2 THE COURT: Mr. Garrity, what's your view of that?

3 MR. GARRITY: Your Honor, that's what I had  
4 recommended as well.

5 THE COURT: All right. I think that's appropriate as  
6 well given all the factors and circumstances presented here.  
7 So with that, what I'm going to do is to formally state the  
8 sentence I'm going to impose followed by a formal statement of  
9 the reasons to the extent I haven't done so already, and then  
02:51PM 10 I'll give counsel a final opportunity to make any corrections  
11 or objections.

12 I'm sorry, Mr. Wortmann, your judicial recommendations  
13 as opposed to the terms of supervised release, your judicial  
14 recommendations were --

15 MR. WORTMANN: Mental health counseling, your Honor,  
16 access to alcohol counseling and any vocational training that's  
17 available while he's incarcerated.

18 THE COURT: All right. Did I hear you say Restart as  
19 well?

02:52PM 20 MR. WORTMANN: Yes, your Honor, the conditions that I  
21 recommended were prohibition on alcohol, the associational and  
22 geographic restrictions, the curfew for the first 12 months to  
23 be enforced by electronic monitoring, substance abuse and  
24 mental health treatment and testing and a recommendation for  
25 Restart and a requirement for the MRT Program if it's



1 considered to be appropriate by probation.

2 THE COURT: All right. Would the defendant please  
3 stand.

4 MR. GARRITY: I'm sorry, Judge.

5 THE COURT: I'm sorry, would the defendant please  
6 stand. Pursuant to the Sentencing Reform Act of 1984 and  
7 having considered the sentencing factors set forth at 18  
8 United States Code, Section 3553(a), it is the judgment of the  
9 Court that the Defendant King Belin is hereby committed to the  
02:53PM 10 custody of the Bureau of Prisons to be imprisoned for a term of  
11 71 months.

12 The Court makes judicial recommendations that the  
13 defendant participate in substance abuse treatment while in  
14 Bureau of Prisons' custody, that the defendant participate in  
15 mental health counseling while in custody and that the  
16 defendant receive appropriate vocational training while in  
17 custody.

18 Upon release from imprisonment, the defendant shall be  
19 placed on supervised release for a term of three years. Within  
02:53PM 20 72 hours of release from custody of the Bureau of Prisons, the  
21 defendant shall report in person to the district to which the  
22 defendant is released.

23 While on supervised release, the defendant shall  
24 comply with the following terms and conditions:

25 The defendant shall not commit another federal, state

1 or local crime and shall not illegally possess a controlled  
2 substance.

3 The defendant shall refrain from any unlawful use of a  
4 controlled substance.

5 The defendant shall submit to one drug test within 15  
6 days of release from imprisonment and at least two periodic  
7 drug tests thereafter, not to exceed 104 tests per year as  
8 directed by Probation.

9 The defendant shall submit to the collection of DNA  
02:54PM 10 sample as directed by Probation.

11 The defendant shall comply with the standard  
12 conditions that have been adopted by the Court, which are set  
13 forth at 5D1.3C of the Sentencing Guidelines and which will be  
14 set forth in detail in the judgment.

15 The defendant is prohibited from possessing a firearm,  
16 destructive device or other dangerous weapon.

17 The defendant is to refrain from any use of alcohol or  
18 alcoholic beverages.

19 The defendant is to participate in a mental health  
02:54PM 20 treatment program as directed by probation.

21 The defendant shall be required to contribute to the  
22 costs of services for such treatment based on the ability to  
23 pay or availability of third-party payment.

24 The defendant shall participate in a program for  
25 substance abuse counseling as directed by probation, which

1 program may include testing, not to exceed 104 drug tests per  
2 year to determine whether the defendant has reverted to the use  
3 of alcohol or drugs.

4 The defendant shall be required to contribute to the  
5 costs of services for such treatment based on the availability  
6 to pay or availability of third-party payment.

7 The defendant shall participate in educational and/or  
8 vocational services programs as directed by Probation. Such  
9 programs may include G.E.D. preparation, classes designed to  
02:55PM 10 improve his proficiency and skills, including reading, writing,  
11 mathematics and computer use, job readiness and skills  
12 development training.

13 Again, he'll be required to contribute to the costs of  
14 services for such program based on the ability to pay or the  
15 availability of third-party payment.

16 During the first year while on supervised release, the  
17 defendant shall abide by a curfew from 9 p.m. to 7 a.m. each  
18 day. The curfew shall be enforced with electronic monitoring.  
19 The defendant is not to interfere with the monitoring  
02:56PM 20 equipment. The defendant may leave his home between 9 p.m. and  
21 7 a.m. only for medical or other emergencies or with the  
22 expressed permission of the probation department in advance.

23 While on supervised release, the defendant shall not  
24 contact or be in the company of the following individuals  
25 without the expressed advanced permission of Probation:

1 Rudy Antenor, Reggie Boyd, Giovanni Cooley, Ellis Golden,  
2 Demarcus Kirkland, Derek Kirkland, Dwan Knight, Corey Mathis,  
3 Jamal Nation, Eric Norman, Kareem Smith, Brian Stokes, Rafael  
4 Wallace or Calvin White.

5 While on supervised release, the defendant is  
6 prohibited from entering a geographic area in the City of  
7 Boston bounded by Talbot Avenue, Dorchester Avenue, a street to  
8 be identified by the government that runs between Dorchester  
9 Avenue and Morton Street, Morton Street and Blue Hill Avenue  
02:57PM 10 without the expressed advanced permission of probation.

11 Nothing in the restrictions shall prohibit the  
12 defendant from traveling on those named roads or traveling on  
13 any bus or subway operating within that zone provided that he  
14 does not get off the bus or get off the train anywhere within  
15 the zone, and, obviously, that includes the Orange Line which  
16 crosses the zone.

17 The Court makes a recommendation that the defendant  
18 consider and be accepted to the Restart Program and the MRT  
19 Program as well, and the Court grants the government's motion  
02:58PM 20 for an entry of order of forfeiture, and the forfeiture will be  
21 included in the judgment.

22 It is further ordered that the defendant shall pay the  
23 United States a special assessment of \$100, which shall be due  
24 immediately.

25 Do counsel have any addition, correction or objection

1 to that sentence not previously stated? Mr. Wortmann.

2 MR. WORTMANN: Your Honor, I assume you're ordering no  
3 fine because he has no ability to pay?

4 THE COURT: Correct. Mr. Garrity.

5 MR. GARRITY: Your Honor, can I confer?

6 THE COURT: Yes.

7 MR. GARRITY: Judge, Mr. Belin has asked me to object  
8 to the curfew as a general matter.

9 THE COURT: Yes.

02:58PM 10 MR. GARRITY: But beyond that, just one question. I  
11 know you indicated that he can leave the home between 9 p.m.  
12 and 7 a.m. for medical purposes?

13 THE COURT: For medical emergencies or other  
14 emergencies or with the expressed permission of Probation. In  
15 other words, let's say that he has a program of evening classes  
16 and he needs to get home by 10:00. If he makes that  
17 arrangement with Probation, they approve, he can do it,  
18 otherwise 9 p.m. to 7 a.m. curfew. He needs to be at home.

19 MR. GARRITY: Is it possible to add in for work  
02:59PM 20 purposes or educational purposes as well?

21 THE COURT: Again, that's fine if Probation approves  
22 in advance, if he gets a job on a night shift. I mean, there  
23 might be different ways that this could play out, but without  
24 Probation's permission for legitimate educational employment  
25 purposes, training purposes, it's either, you know, permission

1 of Probation or medical emergencies, other emergencies, if his  
2 house catches fire, for example.

3 MR. GARRITY: Your Honor, Mr. Belin does object as a  
4 general matter to the curfew and the electronic monitoring.

5 THE COURT: All right. That objection is overruled.  
6 The sentence is hereby stated. In terms of the formal reasons  
7 for the sentence, it is a guideline sentence imposed within the  
8 relevant guideline range for the reasons indicated. It is at  
9 the high end of the guidelines, again, for the reasons  
03:00PM 10 indicated.

11 The term of supervised release and the various  
12 conditions are required to help the defendant adjust to life  
13 outside of prison and to ensure adequate supervision. I'm  
14 imposing no fine as he's established he's not able and even  
15 with the use of a reasonable installment schedule is not likely  
16 to become able to pay all or part of the fines required under  
17 the guidelines.

18 All right. Let me give Mr. Belin his advice of  
19 rights. Mr. Belin, you can appeal your conviction if you  
03:00PM 20 believe that there was some fundamental defect or other error  
21 requiring reversal. You have the right to appeal your  
22 sentence, particularly if you think the sentence was contrary  
23 to law. If you're unable to pay the costs of appeal, you may  
24 ask permission to have those costs waived and appeal without  
25 any pain.

1           You must file any notice of appeal within 14 days  
2 after the entry of judgment, and if you request, the clerk will  
3 immediately prepare and file a notice of appeal on your behalf.

4           Before we break, Mr. Belin, I know you're not happy  
5 with my ruling on the search, I know you were not happy with  
6 the jury's verdict, and I'm sure you're not happy with my  
7 sentence.

8           I do, in fact, wish you well. You've made some  
9 serious mistakes, you're paying a heavy price for it. I hope  
03:01PM 10 that, for whatever reason, you do turn your life around, that  
11 you move your life in a different direction, one that does not  
12 involve gun, among other things, but that's obviously entirely  
13 up to you.

14           It's your choice, and there are people who can help  
15 you with your issues and your problems, who can give you  
16 counseling and training, but at the end of the day, you know,  
17 your life is what you make of it. It's entirely up to you. It  
18 is your responsibility. You said you take responsibility for  
19 having the gun on the street, I appreciate that, and, you know,  
03:02PM 20 you need to take responsibility for your life as well and those  
21 of your children, for that matter.

22           All right. Is there anything further, Mr. Wortmann?

23           MR. WORTMANN: No, your Honor.

24           THE COURT: Mr. Garrity.

25           MR. GARRITY: No, your Honor.

1 THE COURT: Thank you.

2 THE CLERK: All rise.

3 (Whereupon, the hearing was adjourned at  
4 12:30 p.m.)

5

6 C E R T I F I C A T E

7

8 UNITED STATES DISTRICT COURT )

9 DISTRICT OF MASSACHUSETTS ) ss.

10 CITY OF BOSTON )  
11

12

13 I do hereby certify that the foregoing transcript,  
14 Pages 1 through 40 inclusive, was recorded by me  
15 stenographically at the time and place aforesaid in Criminal  
16 Action No. 13-10048-FDS, UNITED STATES OF AMERICA vs.  
17 KING BELIN and thereafter by me reduced to typewriting and is a  
18 true and accurate record of the proceedings.

19 Dated this 23rd day of December, 2015.

20

21 s/s Valerie A. O'Hara

22

23 VALERIE A. O'HARA

24 OFFICIAL COURT REPORTER

25